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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

Docket No. 120106033-2031-01

RIN 0648-BB68

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to approve and implement changes to the Pacific Halibut Catch Sharing Plan (Plan) for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC. These measures include the sport fishery allocations and management measures for Area 2A. These actions are intended to enhance the conservation of Pacific halibut, provide greater angler opportunity where available, and protect overfished groundfish species from being incidentally caught in the halibut fisheries.

DATES: Comments on the proposed changes to the Plan and on the proposed domestic Area 2A halibut management measures must be

received no later than 5 p.m., local time on [insert date 15 days after publication in the Federal Register].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2011-0292, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>
- Fax: 206-526-6736, Attn: Sarah Williams
- Mail: William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Sarah Williams

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. National Marine Fisheries Service (NMFS) will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Information relevant to this proposed rule, which includes a regulatory impact review (RIR), and an initial regulatory

flexibility analysis (IRFA) are available for public review during business hours at the National Marine Fisheries Service Northwest Regional Office, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Sarah Williams, phone: 206-526-4646, fax: 206-526-6736, or e-mail: sarah.williams@noaa.gov

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at [http:// www.access.gpo.gov/su_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html). Background information and documents are available at the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm> and at the Council's Web site at <http://www.pcouncil.org>.

Background

The Northern Pacific Halibut Act (Halibut Act) of 1982, 16 U.S.C. §§ 773-773K, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada (Halibut Convention) (16 U.S.C. § 773c). It requires the Secretary to adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and the Halibut Act. Section 773c of the Halibut Act also authorizes the regional

fishery management councils to develop regulations in addition to, but not in conflict with, regulations of the IPHC to govern the Pacific halibut catch in their corresponding U.S. Convention waters. Each year between 1988 and 1995, the Pacific Fishery Management Council (Pacific Council) developed a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-treaty harvesters and among non-treaty commercial and sport fisheries in Area 2A.

In 1995, NMFS implemented the Pacific Council-recommended long-term Plan (60 FR 14651, March 20, 1995). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. The Plan allocates 35 percent of the Area 2A Pacific halibut TAC to Washington treaty Indian tribes in Subarea 2A-1, and 65 percent of the Area 2A TAC to non-tribal fisheries.

The TAC allocation to non-tribal fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the commercial allocation of Pacific halibut TAC, and

an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53.30' N. lat.), Oregon, and California. North of 46°53.30' N. lat. (Pt. Chehalis), the Plan allows for incidental halibut retention in the sablefish primary fishery when the overall Area 2A TAC is above 900,000 lb (408.2 mt). The Plan also divides the sport fisheries into six geographic subareas, each with separate allocations, seasons, and bag limits.

The Area 2A TAC will be set by the IPHC at its annual meeting on January 24-27, 2012, in Anchorage, AK. Following the annual meeting the IPHC will publish the final TAC on their website and produces a news release. Through this proposed rule, NMFS requests public comments on the Pacific Council's recommended modifications to the Plan and the resulting proposed domestic fishing regulations by [insert date of end of comment period]. This schedule will allow the public the opportunity to consider the final Area 2A TAC before submitting comments on the proposed rule. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the final Area 2A TAC is known and after NMFS reviews public comments and comments from the states, NMFS will issue a final rule for Areas 2A, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E. This final rule will also contain the

IPHC regulations for the 2012 Pacific halibut fisheries. A 15-day public comment period is necessary to incorporate the final U.S. domestic regulations into the IPHC regulations in order to have the combined regulations in place as close to March 1 as possible. The regulations need to be in effect in early March because under the 2011 regulations most commercial fishing seasons started on March 12, although this date may need to be changed by the 2012 regulations to be consistent with the IPHC's decisions at its annual meeting in January. This proposed rule cannot be published earlier because the preliminary TAC amounts were announced at the IPHCs interim meeting on November 30 and December 1, 2011. The 2012 commercial season starting date(s) need to be published soon after the IPHC meeting in January 2012 to notify the public of that date so the industry can plan for the season.

Combining the IPHC regulations with the domestic regulations for Washington, Oregon and, California in the final rule is in the best interest of the public because it results in publication of all the halibut regulations in one Federal Register notice. Section 300.63(b)(1) of the current regulations provides that NMFS will publish the annual sport fishing regulations for Area 2A in the Federal Register, so this notification is where the fishermen get their information. This process reduces confusion for fishery participants because they

only have to reference one document for all Pacific halibut regulations on the West Coast and in Alaska. Combining these regulations also eliminates errors that may occur from trying to separate the halibut regulations into two different rules. The separation could be confusing to the public because many of the IPHC regulations apply to all West Coast and Alaska Pacific halibut fisheries in the U.S. Therefore, if the regulations were split between two different rule making processes many U.S. fishermen would have to refer to two separate Federal Register documents for one fishery.

Incidental Halibut Retention in the Sablefish Primary Fishery North of Pt. Chehalis, Washington

Preliminary estimates of the 2012 Area 2A TAC are higher than the 2011 TAC. The preliminary IPHC TAC recommendation for area 2A is 989,000 lb (448.6 mt), which results in a Washington sport allocation that is more than 214,110 lb (97.1 mt). According to the catch sharing plan, incidental halibut retention would be allowed in the primary directed sablefish fishery north of Point Chehalis, WA, in 2012 under the current preliminary IPHC TAC recommendation. While the preliminary TAC recommendation for area 2A may change following the IPHC annual meeting, it is not anticipated that the TAC will change enough to prohibit incidental halibut retention in the primary sablefish fishery. Landings restrictions will be recommended by

the Council at one of its spring meetings and NMFS will publish the restrictions in the Federal Register.

Pacific Council Recommended Changes to the Plan and Domestic Fishing Regulations

Each year, the Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW), and the tribes with treaty fishing rights for halibut consider whether changes to the Plan are needed or desired by their fishery participants. Fishery managers from the states hold public meetings before both the September and November Pacific Council meetings to get public input on revisions to the Plan. At the September 2011 Pacific Council meeting, WDFW and ODFW recommended changes to the Plan, while NMFS and the tribes did not recommend any changes to the Plan for the 2012 fishing season. Following the meeting, WDFW and ODFW again reviewed their proposals with the public and drafted their recommended revisions for review and recommendation by the Pacific Council.

At its November 2-7, 2011, meeting in Costa Mesa, CA, the Pacific Council considered the results of state-sponsored workshops on the proposed changes to the Plan, and made its final recommendations for modifications to the Plan. The following are the Council's proposed changes to the Plan:

1. Adjust the primary fishery schedule of the Washington South Coast subarea (section (f)(1)(ii)) to be open for the first 3

consecutive weeks Sunday and Tuesday and closed the following week. Previously, the fishery was open the last Sunday in the month. The goal of this change is to maintain the status quo opening date and to maintain the number of open days prior to the management closure at the end of the month.

2. Adjust the subarea quota split for the Columbia River subarea (section (f)(1)(iv)) between the early and late fishery from 70 percent for the early fishery and 30 percent for the late fishery to 80 percent for the early fishery and 20 percent to the late fishery. The goal of this change is to allocate the subarea quota to match recent year effort in the area and to maximize access to the overall quota. Since 2008, the late season fishery has harvested less than 20 percent of the subarea quota even though the allocation was 30 percent.

3. Set the Oregon TAC contribution to the subarea quota for the Columbia River subarea (section (f)(1)(iv)) equal the Washington contribution. The goal of this change is to better align Oregon's contribution to the subarea with the recent catches in Oregon.

4. Adjust the Oregon Central Coast subarea quota (section (f)(1)(v)) from 67 percent to 63 percent for the spring fishery and from 8 percent to 12 percent for the nearshore fishery and allow any remaining quota to be allocated from the spring fishery to either the summer fishery and/or the nearshore

fishery. The goal of these changes is to provide as many fishing days as possible to the nearshore fishery and as many days as possible to the summer season when participation is at its highest. The summer fishery was open only two days in 2011.

The Council-proposed change in the Oregon contribution to the Columbia River subarea would result in a small portion of the overall Oregon/California quota being undistributed. The overall Oregon/California quota is separated into three components: 1) A contribution to the Columbia River (previously 5 percent or amount equal to the Washington contribution, whichever was greater); 2) a 92 percent allocation to the Oregon Central Coast subarea; and 3) a 3 percent allocation to the South of Humbug subarea. In past years the Oregon contribution was set at 5 percent because it was greater than the Washington contribution, meaning that all three allocations equaled 100 percent. This year, the Oregon contribution is set equal to the Washington contribution, which is an amount less than 5 percent of the overall Oregon/California allocation. This change results in a remainder of 2 percent undistributed quota. Therefore the sum of the contribution to the Columbia River subarea and the allocations to the Oregon Central Coast and South of Humbug subareas does not equal the overall Oregon/California quota. To remedy this situation NMFS is not proposing to make any allocation changes, but is proposing to

allocate the remainder of the overall Oregon/California quota left after the Columbia River contribution is removed according to the Oregon/California subarea allocations specified in the Plan i.e., the remainder would be distributed 92 percent to the Central Coast subarea and 3 percent to the South of Humboldt subarea.

Proposed Changes to the Plan

NMFS is proposing to approve the Pacific Council recommendations and to implement the changes described above. A version of the Plan including these changes can be found at <http://www.nwr.noaa.gov/Groundfish-Halibut/Pacific-Halibut/Index.cfm>.

Proposed Corrections to Federal Regulations

NMFS is proposing to make minor corrections to the federal regulations at § 300.63 to make the halibut regulations regarding the sablefish primary fishery consistent with the groundfish regulations which define the sablefish primary fishery. These changes are minor corrections and do not represent a shift in policy regarding the sablefish primary fishery or the halibut fishery.

Proposed 2012 Sport Fishery Management Measures

NMFS also proposes sport fishery management measures that are necessary to implement the Plan in 2012. The annual domestic management measures are published each year through a

final rule. For the 2011 fishing season the final rule was published on March 16, 2011 (76 FR 14300), and the following section numbers refer to sections within that final rule. The final 2012 TAC for Area 2A will be determined by the IPHC at its annual meeting on January 24-27, 2012, in Anchorage, AK.

Because the final 2012 TAC has not yet been determined, these proposed sport fishery management measures use the IPHC staff's preliminary 2012 Area 2A TAC recommendation of 989,000 lb (448.6 mt), which is higher than the 2011 TAC of 910,000 lb (412.7 mt). Where season dates are not indicated, those dates will be provided in the final rule, following determination of the 2012 TAC and consultation with the states and the public.

In Section 8 of the annual domestic management measures, "Fishing Periods," paragraph (2)-(3) is proposed to read as follows and paragraph (6) is added to read as follows:

(1) * * *

(2) Each fishing period in the Area 2A directed fishery shall begin at 0800 hours and terminate at 1800 hours local time on (insert season dates) unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A in accordance with regulations promulgated by NMFS. This fishery will occur between 1200 hours

local time on (insert date) and 1200 hours local time on (insert season date).

(4) * * *

(5) * * *

(6) Notwithstanding paragraph (7) of section 11, an incidental catch fishery is authorized during the sablefish primary fishery in Area 2A in accordance with regulations promulgated by NMFS.

In section 26 of the annual domestic management measures, "Sport Fishing for Halibut," paragraph 1(a)-(b) will be updated with 2012 total allowable catch limits in the final rule. In section 26 of the annual domestic management measures, "Sport Fishing for Halibut" paragraph (8) is proposed to read as follows:

(8) * * *

(a) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30' N. lat., 124°23.70' W. long. north to 48°24.10' N. lat., 124°23.70' W. long., is not managed in-season relative to its quota. This area is managed by setting a season that is projected to result in a catch of 57,393 lb (26 mt).

(i) The fishing season in eastern Puget Sound (east of 123°49.50' W. long., Low Point) is (insert season dates), and the

fishing season in western Puget Sound (west of 123°49.50' W. long., Low Point) is (insert season dates), 5 days a week (Thursday through Monday).

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70' N. lat.), is 108,030 lb (49 mt).

(i) The fishing seasons are:

(A) Commencing on May 10 and continuing 2 days a week (Thursday and Saturday) until 108,030 lb (49 mt) are estimated to have been taken and the season is closed by the Commission or until May 31.

(B) If sufficient quota remains the fishery will reopen on June 7 in the entire north coast subarea, continuing 2 days per week (Thursday and Saturday) until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. When there is insufficient quota remaining to reopen the entire north coast subarea for another day, then the nearshore areas described below will reopen for 2 days per week (Thursday and Saturday), until the overall quota of 108,030 lb (49 mt) is estimated to have been taken and the area is closed by the Commission, or until September 30, whichever is earlier.

After May 31, any fishery opening will be announced on the NMFS hotline at 800-662-9825. No halibut fishing will be allowed after May 31 unless the date is announced on the NMFS hotline. The nearshore areas for Washington's North Coast fishery are defined as follows:

(1) WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30' N. lat., 124°23.70' W. long. north to 48°24.10' N. lat., 124°23.70' W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73' N. lat., 124°43.00' W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62' N. lat., 124°43.55' W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) Shoreward of the recreational halibut 30-fm boundary line, a modified line approximating the 30-fm depth contour from the Bonilla-Tatoosh line south to the Queets River. The 30-fm depth contour is defined in groundfish regulations at 50 CFR 660.71(e).

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined in groundfish regulations at §660.70(a).

(c) The quota for landings into ports in the area between the Queets River, WA ($47^{\circ}31.70'$ N. lat.) and Leadbetter Point, WA ($46^{\circ}38.17'$ N. lat.), is 42,739 lb (19.3 mt).

(i) This subarea is divided between the all-waters fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from $47^{\circ}31.70'$ N. lat. south to $46^{\circ}58.00'$ N. lat. and east of a boundary line approximating the 30 fm depth contour. This area is defined by straight lines connecting all of the following points in the order stated as described by the following coordinates (the Washington South coast, northern nearshore area):

- (1) 47°31.70' N. lat, 124°37.03' W. long;
- (2) 47°25.67' N. lat, 124°34.79' W. long;
- (3) 47°12.82' N. lat, 124°29.12' W. long;
- (4) 46°58.00' N. lat, 124°24.24' W. long.

The south coast subarea quota will be allocated as follows: 40,739 lb (18.4 mt) for the primary fishery and 2,000 lb (0.9 mt) for the nearshore fishery. The primary fishery commences on May 6 and continues 2 days a week (Sunday and Tuesday) until May 22. If the primary quota is projected to be obtained sooner than expected the management closure may occur earlier. Beginning on June 3 the primary fishery will be open 2 days per week (Sunday and/or Tuesday) until the quota for the south coast subarea primary fishery is taken and the season is closed by the Commission, or until September 30, whichever is earlier. The fishing season in the nearshore area commences on May 6 and continues seven days per week. Subsequent to closure of the primary fishery the nearshore fishery is open seven days per week, until 42,739 lb (19.3 mt) is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be

transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Seaward of the boundary line approximating the 30-fm depth contour and during days open to the primary fishery, lingcod may be taken, retained and possessed when allowed by groundfish regulations at 50 CFR 660.360, Subpart G.

(iv) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast established to protect yelloweye rockfish. The South Coast Recreational YRCA is defined at 50 CFR §660.70(d). The Westport Offshore YRCA is defined at 50 CFR §660.70(e).

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17' N. lat.) and Cape Falcon, OR (45°46.00' N. lat.), is 11,895 lb (5.3 mt).

(i) The fishing season commences on May 3, and continues 3 days a week (Thursday, Friday and, Saturday) until 9,516 lb (4.3 mt) are estimated to have been taken and the season is closed by the Commission or until July 15, whichever is earlier. The fishery will reopen on August 3 and continue 3 days a week (Friday through Sunday) until 2,379 lb (1.1 mt) have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred in-season to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by Pacific Coast groundfish regulations, when halibut are on board the vessel.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00' N. lat.) and Humbug Mountain (42°40.50' N. lat.), is 191,780 lb (86.9 mt).

(i) The fishing seasons are:

(A) The first season (the "inside 40-fm" fishery) commences May 1 and continues 7 days a week through October 31, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon "inside 40-fm" fishery (23,014 lb (10.4 mt)) or any in-season revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00' N. lat. and 42°40.50' N. lat. is defined at § 660.71(k).

(B) The second season (spring season), which is for the "all-depth" fishery, is open from May 10, 2012 to (insert dates). The projected catch for this season is 120,821 lb (54.8 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Depending on the amount of unharvested catch available, the potential season re-opening dates will be: (insert dates no later than July 31). If NMFS decides in-season to allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS

hotline (206) 526-6667 or (800) 662-9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) If sufficient unharvested catch remains, the third season (summer season), which is for the "all-depth" fishery, will be open from August 3, 2012 to (insert dates) or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling 168,766 lb (76.5 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if sufficient quota remains after the last day of the first scheduled open period (insert date following establishment of season dates). If, after this date, an amount greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday and Saturday, beginning (insert dates of next possible open period as established preseason), and ending October 31. If after September 3, an amount greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not

already open every Friday and Saturday, the fishery may re-open every Friday and Saturday, beginning September 7 and 8, and ending October 31. After September 3, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod, when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall

Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined at §660.70(f).

(f) The area south of Humbug Mountain, Oregon (42°40.50' N. lat.) and off the California coast is not managed in-season relative to its quota. This area is managed on a season that is projected to result in a catch of 6,056 lb (2.7 mt).

(i) The fishing season will commence on May 1 and continue 7 days a week until October 31.

(ii) The daily bag limit is one halibut of any size per day per person.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) provides the Secretary of Commerce with the general responsibility to carry out the Convention between Canada and the United States for the management of Pacific halibut, including the authority to adopt regulations as may be necessary

to carry out the purposes and objectives of the Convention and Halibut Act. This proposed rule is consistent with the Secretary of Commerce's authority under the Halibut Act.

This action has been determined to be not significant for purposes of Executive Order 12866.

NMFS has prepared an RIR/IRFA on the proposed changes to the Plan and the annual domestic Area 2A halibut management measures. Copies of these documents are available from NMFS (see ADDRESSES). NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. The IRFA is available from NMFS (see ADDRESSES). A summary of the IRFA follows:

A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of \$4.0 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For wholesale businesses, a small business is one that employs not more than 100 people. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$6.5 million. All of the businesses

that would be affected by this action are considered small businesses under Small Business Administration guidance.

In 2011, 604 vessels were issued IPHC licenses to retain halibut. IPHC issues licenses for: the directed commercial fishery in Area 2A (147 licenses in 2011); incidental halibut caught in the salmon troll fishery (316 licenses in 2011); and the charterboat fleet (141 licenses in 2011). No vessel may participate in more than one of these three fisheries per year. Individual recreational anglers and private boats are the only sectors that are not required to have an IPHC license to retain halibut.

The IRFA analyzed the impacts of the changes to the Plan and regulations. For the 2012 fishing year the proposed changes to the Plan, which allocates the catch of Pacific halibut among users in Washington, Oregon and California, and the federal regulations, would:

1. Adjust the primary fishery schedule for the Washington Southcoast subarea (section (f)(1)(iii)) to be open for the first 3 consecutive weeks Sunday and Tuesday and closed the following week.
2. Adjust the subarea quota split for the Columbia River subarea (section (f)(1)(iv)) between the early and late fishery from 70 percent for the early fishery and 30 percent for the late fishery to 80 percent for the early

fishery and 20 percent to the late fishery, and adjust the Oregon contribution to the subarea quota to equal the Washington contribution.

3. Adjust the Oregon Central Coast subarea quota (section (f)(1)(v)) from 67 percent to 63 percent for the spring fishery and from 8 percent to 12 percent for the nearshore fishery and allow remaining quota to be allocated from the spring fishery to either the summer fishery and/or the nearshore fishery.

Because there is no new analysis or information available, the RIR/IRFA relies on the analysis in the 2009 RIR, which used information from the Pacific Fishery Management Council's Draft Environmental Impact Statement (DEIS) (available at ADDRESSES) on the 2009-2010 Groundfish Biennial Harvest Specifications and Management Measures to make personal income impact projections of the TAC on coastal communities. Personal income is considered a key indicator of economic activity, and is used in economic analysis to evaluate distributional effects on local and regional economies associated with changes in regulations. Income impacts include the amount of employee salaries and benefits, business owner (proprietor) income, and property-related income (rents, dividends, interest, royalties, etc.) that result from commercial fishing and recreational expenditures. Using available analysis from the DEIS, the 2009

RIR estimated that the 2008 commercial, recreational, and tribal fisheries generated about \$8.8 million in personal income for the coastal tribal and non-tribal communities. This 2008 estimate was based on a TAC of 1,220,000 lbs. For 2012, the TAC is projected to be 989,000 lbs, or about 81 percent of the 2008 TAC. On a proportional basis, this decline would suggest that the income impacts for 2012 would be about \$8.0 million in 2008 dollars. This projection assumes that prices are constant. However, this is not the case. According to the Pacific States Marine Fisheries Commission PacFIN data reports (Report 307), halibut prices have varied significantly by year: 2008-\$3.57/lb, 2009-\$2.72/lb, and through November 2010-\$4.01 per lb. At \$4.01 per lb, the projected ex-vessel value of the 2012 commercial tribal (346,150 lbs) and non-tribal (203,783 lbs) fishery is about \$2.2 million. (Note that these ex-vessel price changes only affect the income estimates associated with commercial fishermen and tribal fishermen.)

The proposed changes to the Plan and regulations do not include any reporting or recordkeeping requirements. These changes will not duplicate, overlap or conflict with other laws or regulations. These changes to the Plan and annual domestic Area 2A halibut management measures are not expected to meet any of the RFA tests of having a "significant" economic impact on a "substantial number" of small entities because the changes will

not affect overall allocations. They are designed to provide the best fishing opportunities within the overall TAC. Nonetheless, NMFS has prepared an IRFA. Through this proposed rule, NMFS requests comments on these conclusions.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Section 302(b)(5) of the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. Government formally recognizes that the 13 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed (U and A) fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

For the 2011 annual management measures and implementation of the catch sharing plan NMFS NWR initiated consultation on the halibut fishery under Section 7 of the ESA because of the listing of yelloweye, canary, and bocaccio rockfish of the Puget Sound/Georgia Basin. Area 2A partially overlaps with the Distinct Population Segments (DPSs) for listed rockfish. NMFS completed a 7(a)(2)/7(d) determination memo under the Endangered Species Act (ESA) finding that bycatch in the 2011 fishery was not likely to be a significant impact on listed species, that direct effects of the fishery (e.g. direct takes) were not likely to jeopardize the continued existence of any listed species, and that in no way did the 2011 fishery make an irreversible or irretrievable commitment of resources by the agency. At this time the consultation is not completed. Therefore for the 2012 fishery the determinations made under the ESA will be updated at the final rule stage.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, and Indian fisheries.

Dated: January 30, 2012.

Alan D. Risenhoover,
Acting Deputy Assistant Administrator
For Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300-INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

2. In § 300.63, paragraphs (b) (3), (d) (1) (ii), (d) (3) - (d) (4), (d) (6), and (e) (2) are revised to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(b) * * *

(3) A portion of the Area 2A Washington recreational TAC is allocated as incidental catch in the sablefish primary fishery north of 46°53.30' N. lat, (Pt. Chehalis, Washington), which is regulated under 50 CFR 660.231. This fishing opportunity is only available in years in which the Area 2A TAC is greater than 900,000 lb (408.2 mt,) provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). Each year that this harvest is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the Federal Register. These restrictions will be designed to ensure the halibut harvest is incidental to the sablefish harvest and will be based on the amounts of halibut and sablefish available to this fishery, and other pertinent factors. The restrictions may include catch or landing ratios, landing limits, or other means to control the rate of halibut landings.

(i) In years when this incidental harvest of halibut in the sablefish primary fishery north of 46°53.30' N. lat. is allowed, it is allowed only for vessels using longline gear that are registered to groundfish limited entry permits with sablefish endorsements and that possess the appropriate incidental halibut harvest license issued by the Commission.

(ii) It is unlawful for any person to possess, land or purchase halibut south of 46°53.30' N. lat. that were taken and retained as incidental catch authorized by this section in the sablefish primary fishery.

* * * * *

(d) * * *

(1) * * *

(ii) The commercial directed fishery for halibut during the fishing period(s) established in section 8 of the annual domestic management measures and IPHC regulations and/or the incidental retention of halibut during the sablefish primary fishery described at 50 CFR 660.231; or

* * * * *

(3) No person shall fish for halibut in the directed commercial halibut fishery during the fishing periods established in section 8 of the annual domestic management measures and IPHC regulations and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8 of the annual domestic management measures and IPHC regulations.

(4) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally

taken in the sablefish primary fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

* * * * *

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under section 8 of the annual domestic management measures and IPHC regulations taken on a vessel that, during the same calendar year, has been used in the directed commercial halibut fishery during the fishing periods established in Section 8 of the annual domestic management measures and IPHC regulations and/or retained halibut incidentally taken in the sablefish primary fishery for Area 2A or that is licensed to participate in these commercial fisheries during the fishing periods established in Section 8 of the annual domestic management measures and IPHC regulations in Area 2A.

* * * * *

(e) * * *

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(2) Non-treaty commercial vessels operating in the incidental catch fishery during the sablefish primary fishery north of Pt. Chehalis, Washington, in Area 2A are required to fish outside of a closed area. Under Pacific Coast groundfish

regulations at 50 CFR 660.230, fishing with limited entry fixed gear is prohibited within the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA). It is unlawful to take and retain, possess, or land halibut taken with limited entry fixed gear within the North Coast Commercial YRCA. The North Coast Commercial YRCA is an area off the northern Washington coast, overlapping the northern part of the North Coast Recreational YRCA, and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the North Coast Commercial YRCA are specified in groundfish regulations at 50 CFR 660.70(b).

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